

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

In re:

USA COMMERCIAL MORTGAGE CO.,

Debtor.

3685 SAN FERNANDO LENDERS, LLC et al.,

Plaintiffs,

v.

COMPASS USA SPE, LLC et al.,

Defendants.

09-bk-32824-RCJ

2:07-cv-00892-RCJ-GWF

3:07-cv-00241-RCJ-GWF

ORDER

This case arises out of the attempts of certain direct lenders to terminate a bankrupt entity and its assigns—one of whom is now itself bankrupt—as loan servicers. A jury gave Plaintiffs a verdict. The Court ordered Defendants to post a \$100,000 cost bond pending appeal, which they did. Platinum Financial Trust, LLC, a judgment creditor, has now served a writ of garnishment upon the Court, seeking to garnish the bond to satisfy its judgment. Defendants have moved to quash the writ. The Court grants the motion. If Defendants lose on appeal, and if the Court of Appeals or this Court awards costs or fees on appeal, Plaintiffs will be entitled to satisfy that award out of the bond. And as Defendants note, it is procedurally improper for a party to attempt—especially via power derived from the Court itself—directly to garnish a bond posted with the Court. A party cannot use a writ of garnishment to purport to command a court how to

1 dispose of a bond posted therewith. Once there is no more purpose for the bond, of course, a
2 court has no interest in any remaining portion of it. Platinum Financial Trust, LLC may therefore
3 file a motion requesting the Court to transfer the bond, or any remaining portion of it, to
4 Platinum Financial Trust, LLC upon disposition of costs on appeal, and Defendants may oppose
5 the motion. But no party may purport to command the Court how to dispose of the bond. The
6 state statute cited by the judgment creditor appearing to permit the garnishment of funds held by
7 clerks of the state courts, even assuming the statute applies to bonds, cannot apply against federal
8 courts. *See* U.S. Const. art. VI, cl. 2; *M'Culloch v. Maryland*, 17, U.S. 316, 327–29 (1819).

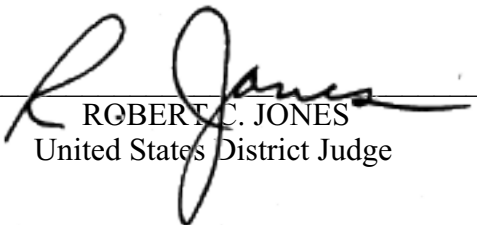
9 **CONCLUSION**

10 IT IS HEREBY ORDERED that the Motion to Quash (ECF No. 2340) is GRANTED.

11 IT IS FURTHER ORDERED that the Motion to Intervene (ECF No. 2342) and the
12 Motion to Enforce Writ of Garnishment (ECF No 2343) are DENIED.

13 IT IS SO ORDERED.

14 DATED: This 16th day of October, 2013.

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16 ROBERT C. JONES
17 United States District Judge
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